

FCC MAIL SECTION

Federal Communications Commission

DA 00-833

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Mt. Washington, Jefferson, New
Hampshire, and Newry, Maine)¹

MM Docket No. 99-8
RM-9433
RM-9642

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 5, 2000

Released: April 14, 2000

By the Chief, Allocations Branch:

1. At the request of Dana Puopolo ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 14 FCC Rcd 1025 (1999), proposing the allotment of Channel 247A at Mt. Washington, New Hampshire, as the community's second local FM service. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. Comments and counterproposals were filed by North Country Radio, Inc. ("North Country")² requesting the allotment of Channel 247A to Jefferson, New Hampshire, and Barry P. Lunderville ("Lunderville") requesting the allotment of Channel 247A to Newry, Maine.³ Mt. Washington and Jefferson are located approximately 17 kilometers apart while the Commission's Rules stipulate a minimum distance separation of 115 kilometers for co-channel Class A allotments. Therefore, these proposals are mutually exclusive.

2. North Country states that Jefferson is a rural agricultural and vacation resort community located north of Mt. Washington. It is an incorporated community with a 1990 U.S. Census population of 965 people, with its own local government, town hall, fire department, library, school,

¹ The communities of Jefferson, NH, and Newry, ME, have been added to the caption.

² Public Notice of the filing of the counterproposal was given on May 17, 1999, Rept. No. 2329.

³ The counterproposal filed by Barry P. Lunderville ("Lunderville") requests the allotment of Channel 247A to Newry, Maine, as the community's first local aural service. However, Lunderville's counterproposal is not acceptable for consideration herein because he failed to include affidavits verifying that the statements contained in his counterproposal were accurate to the best of his knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Further, Section 1.420(b) of the Commission's Rules places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also, Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes ("Abuse of Process"), 5 FCC Rcd 3910, n. 41 (1990). (Therefore, we believe these rules should be strictly enforced in allocations proceedings.) Therefore, Lunderville's counterproposal will be dismissed and the reply comments filed by Lunderville and North Country will not be discussed.

the Jefferson Elementary School, and post office and zip code. In addition, petitioner states that Jefferson has three churches, civic organizations which include the Starr King Grange, the Waumbek Methna Snowmobile Club, the Jefferson Historical Society and the Jefferson Conservation Commission, as well as businesses such as Central Asphalt Paving, Cherry Pond Designs, Mike Gray & Son Trucking and Excavating, Ingerson Repair, Jefferson Irving Mainway, Josselyn's Sawmill, Inc., LaLumiere Trucking, North Country Concrete, the Old Corner Store, SDI Signs and White Mountain Mulch Producers, Inc. Petitioner points out that Jefferson also has numerous lodging establishments, including Alpine Forest Motel, Applebrook Bed & Breakfast, the Evergreen Motel, Jefferson Campgrounds, the Jefferson Inn, the Lantern Inn, Majestic View Cabins & Lodge and Skywood Manor Motel. Thus, North Country submits that Jefferson is a community for allotment purposes. Finally, North Country states that the allotment of Channel 247A at Jefferson would provide service to 53,504 people within the station's 60 dBu contour while the allotment of the channel at Mt. Washington would provide service to only 26,785 persons within its 60 dBu contour.

3. Based on the information before us, we believe that both communities could benefit from the allotment of Channel 247A. However, a staff engineering study has determined that there are no alternate channels which can be allotted to either community. Using the Commission's allotment priorities, we find that the public interest would be better served by the allotment of Channel 247A to Jefferson, as the community's first local aural service (priority 3), rather than the allotment of the channel to Mt. Washington, as its second local aural service (priority 4).⁴

4. Channel 247A can be allotted to Jefferson in compliance with the Commission's minimum distance separation requirements, with respect to all domestic allotments, with a site restriction of 5.1 kilometers (3.2 miles) southeast, to avoid a short-spacing to Station WGMT, Channel 249C3, Lyndon, Vermont.⁵ Use of this site restriction does not negate the short-spacings to unoccupied and unapplied-for Channel 247C1 at both Sherbrook, Quebec, and Thetford-Mines, Quebec, Canada. The allotment requires Canadian concurrence as a specially-negotiated short-spaced allotment since Bristol is located within 320 kilometers (200 miles) of the U.S.-Canadian border and the allotment will be short-spaced to Station CHOM-FM, Channel 249C1, Montreal, Quebec. Canadian concurrence in the allotment has been requested but has not yet been received. However, rather than delay any further the opportunity to file applications for this channel, we will allot Channel 247A to Jefferson at this time. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Canadian Government, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement or if objected to by Industry Canada."

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r)

⁴ The allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local aural service; and (4) other public interest matters. See, Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

⁵ The coordinates for Channel 247A at Jefferson, NH, are 44-23-40 NL; 71-25-15 WL.

and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective May 30, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Jefferson, New Hampshire	247A

6. IT IS FURTHER ORDERED, That the petition for rule making filed by Dana Puopolo (RM-9433) to allot Channel 247A to Mt. Washington, New Hampshire, IS DENIED, and the counterproposal filed by Barry P. Lunderville to allot Channel 247A to Newry, Maine, IS DISMISSED.

7. A filing window for Channel 247A at Jefferson, New Hampshire, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau